

## CHAPTER 10 / D. SCHARIE TAVCER

# Prostitution and Missing and Murdered Women and Girls in Canada

## Introduction

*“Prostitution is not the oldest profession; it is the oldest oppression.”*

Nicholas Kristof

If ever there was a topic most debated, it is prostitution. Beliefs about it vary greatly, from one end of the spectrum to the other, and they vary within provinces and across countries. In Canada, each province has the autonomy to administer the federal law and justice system how it sees fit, which is often driven by the ruling political party at the time. And furthermore, you may find that within one province, the various municipal and/or provincial policing agencies have different mandates when it comes to enforcing prostitution laws and choosing subjects to target. All of this adds to the complexity of supporting “the best” idea to address prostitution.

Prostitution involves two specific and symbolic domains of society—sexual relations and economics—and since these domains are highly gendered, the female prostitute or sex worker has long represented a troubling figure, disrupting what are traditionally deemed to be natural gender binaries (males should be active whereas females should be passive; economics is in the public domain whereas sexual relations is relegated to the private arena). Often simultaneously viewed as an inevitable feature of all human societies, prostitution is held to meet the supposedly powerful and biologically given sexual impulses of men. Thus it is sometimes described as a “necessary evil” and considered to protect the virtue of “good” girls and women by “soaking up” excess male sexual urges which would otherwise lead to rape and marital breakdown (O’Connell-Davidson, 2007).

Take what you will from such dichotomies, there remain a variety of ideas and positions about prostitution and this chapter will introduce you to some of the ideas that currently consume the literature. What is presented here is overly succinct but the intent is to provide you with factual information so that you may contribute to the recurring and robust debate.

## What Is Prostitution?

The term *prostitution* is popularly used to refer to the trade of sexual services for payment in cash or similar (O’Connell-Davidson, 2007). Often sex is traded for money but also for things like food and shelter, drugs, or commodities, such as rent or debt repayment. Others (Musto, Jackson, & Shi, 2015) apply an intersectional lens to a definition:

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Prostitution is a gendered, sexualized, and racialized labor system, one that typically involves the exchange of sexual services for money, goods, or other benefits. Sex work encompasses different types of intimate arrangements that blur the boundaries between erotic, emotional, and economic labor. Sex work is also part of an industry and commercial market that is global in reach and diverse in its spatial, legal, and occupational organization. (p. 279)

In previous editions of the *Criminal Code of Canada* there existed definitions and offences of prostitution (see Box 10.1). On a global level, the United Nations has defined prostitution and sexual exploitation under its trafficking and migration protocols (see Box 10.2). After *R v Bedford* (2013; discussed below), the rewriting of those laws removed the term *prostitution* and clarified some of the offence categories. Prostitution, the exchange of sex for money, has always been legal in Canada (as long as parties are adults and no one is coerced or forced). But the *Criminal Code* prohibits virtually every other activity related to prostitution in almost every conceivable public or private place (Betteridge & Csete, 2016).

### BOX 10.1

#### Definitions and Offences of Prostitution Before *R v Bedford*

- Section 210 of the *Criminal Code* made it illegal to keep a place for the purpose of prostitution (known as a common bawdy house), or to be found in such a place.
- Section 211 made it illegal to transport a person to a common bawdy house.
- Section 212 prohibited enticing, encouraging, or forcing a person to engage in prostitution (procuring), and living on the avails of prostitution.
- Section 213 made it illegal to communicate in a public place or stop a person or vehicle for the purposes of engaging in prostitution. *Public place* is defined broadly, to include any place to which the public has a right of access and includes motor vehicles.

### BOX 10.2

#### The United Nations Convention

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime states that:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation

shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

Source: United Nations Treaty Collection. (2017). Chapter XVIII Penal Matters 12 a: *A protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime*. (2000, November 15). New York: United Nations, *Treaty Series*, vol. 2237, p. 319; Doc. A/55/383.

Canada's *Criminal Code* defines trafficking in section 279.01(1) as:

Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

(a) to imprisonment for life and to a minimum punishment of imprisonment for a term of five years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of four years in any other case.

### *R v Bedford*

The case was initiated in 2007 by three Ontario sex workers, Terri Jean Bedford, Amy Lebovitch, and Valerie Scott, who asked the court to strike down the three sections of the *Criminal Code* because they violate sex workers' constitutional right to security of the person guaranteed under the *Charter of Rights and Freedoms*. Their point was that the contradictory and convoluted laws made sex work dangerous and did not permit it to be a recognized form of labour; they argued for a change to the laws.

In 2013, the Supreme Court of Canada ruled that three sections, section 210 (keeping or being found in a bawdy house), section 212(1)(j) (living on the avails of prostitution), and section 213(1)(c) (communicating in public for the purpose of prostitution), violate the section 7 right to security of the person protected by the *Canadian Charter of Rights and Freedoms*. All three laws have been struck down. The court stated:

The prohibitions at issue do not merely impose conditions on how prostitutes operate. They go a critical step further, by imposing dangerous conditions on prostitution; they prevent people engaged in a risky—but legal—activity from taking steps to protect themselves from the risk. (para. 60)

What this means is that because it is (was) illegal to engage in sex work in a public place (communicating...) and it is (was) illegal to be in a brothel or similar establishment (keeping or found in a common bawdy house), sex workers were forced into the dark alleys and other unsavoury corners of society where they were easily preyed upon and forced into debt servitude (pimps and organized crime) because it was illegal for sex workers to earn a living from sex work (living on the avails...), which was in fact a legal enterprise (Betteridge & Csete, 2016).

The sections from the Charter that applied to the challenge of prostitution laws were:

- Section 1 permits the government to justify a law or action that otherwise violates a Charter right, if it meets certain conditions.
- Section 2(b) guarantees everyone freedom of expression.
- Section 2(d) guarantees everyone freedom of association.
- Section 7 protects everyone from violations of "life, liberty and security of the person," except where the violation is "in accordance with the principles of fundamental justice."
- Section 15 guarantees everyone equality before and under the law, and equal protection and benefit of the law.

In June 2014, the federal government (under Stephen Harper) tabled new legislation (Bill C-36) in response to the Supreme Court ruling. Bill C-36, the *Protection of Communities and Exploited Persons Act*, which came into force on December 6, 2014 (Government of Canada, 2015). The legislation criminalized the purchase of sexual services from any person, thereby making prostitution illegal in Canada for the first time. The Act emulated a version of the “Nordic Model,” first implemented in Sweden in 1999, which treats all prostitution as exploitation of primarily women and girls and aims to reduce its incidence by focusing on penalizing the purchasers of sexual services and those who benefit financially from the prostitution of others (such as pimps and organized crime; Rotenberg, 2016).

To date, Alberta is the only province in Canada with legislation that provides police and children and family services with the tools to apprehend kids engaging in prostitution or at risk of engaging in it. Enacted in 1999, the *Protection of Children Involved in Prostitution Act* (PChiP), gives authorities the right to place kids (age 18 and under) in protective safe houses where they receive medical and psychological care, education, detox (if needed), and other supports to be able to stop sexual exploitation (Government of Alberta, 2010). In 2007, this Act was revised and it is now known as the *Protection of Sexually Exploited Children Act* (PSECA, 2014). One of the major changes was an increase to the age limit for services. Other countries have adopted novel approaches to addressing prostitution or sexual exploitation (see Box 10.3).

### BOX 10.3

#### Prostitution and Exploitation Acts Around the World

- The Nordic Model—officially known as the *Swedish Sex Purchase Act* (1999)—makes paying for sex a crime but selling sex is not.
- In 2001, Germany instituted laws that mandated sex workers be treated like workers in any other industry, which allows them to sue for better wages and have full access to health insurance, pensions, and other benefits.
- In the Netherlands, prostitution is considered a profession like any other, according to the law and by society
- in general. Legislation in 2001 was enacted that allows sex workers the right to claim for hygienic working conditions, security at the workplace, and to pay income tax. “Forced” prostitution and procuring minors remain illegal.
- In 2003, New Zealand passed a law to decriminalize prostitution—sex work is no longer considered a crime.

#### What Statistics Tell Us About Prostitution

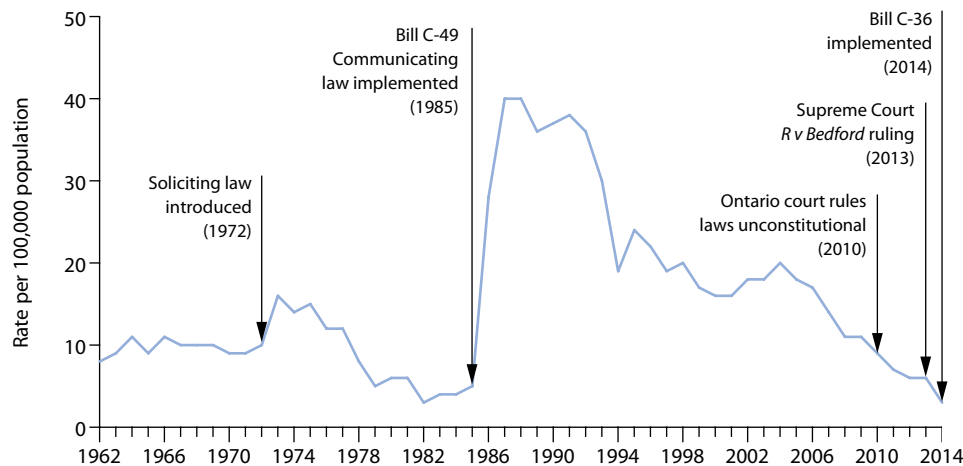
Any reported statistics about the prevalence of prostitution and/or arrest and charges laid against violators of prostitution laws need to be taken with a grain of salt. Since it is typically an underground or hidden industry, it is difficult to count the numbers of people involved in prostitution (the sellers or the buyers). Only when police conduct stings or sweeps will that city be able to report on numbers of those arrested; that in itself is limited to only those caught. And each police service may prioritize stings and sweeps differently (youth versus adults), thereby collecting different data than their counterparts in another city or province.

All of that being said, in 2016, the Canadian Centre for Justice Statistics released a report that included collated prostitution data (gathered from police services across Canada) for the first time since the 1990s. Rotenberg (2016) reported that between 2009 and 2014 (a period prior to *R v Bedford*, 2013), there were 16,879 prostitution incidents (communicating or attempting to communicate with a person for the purpose of engaging in or obtaining sexual services) reported by police, which represents less than 0.1 percent of all crimes reported during the same period.

Changes in prostitution legislation have a direct influence on police-reported prostitution crimes (see Figure 10.1 for more detail). For instance, in 1985, an offence prohibiting communicating in public places for the purposes of purchasing or selling sexual services was enacted (Bill C-49). A large increase in police-reported prostitution incidents under the communicating offence was noted following the implementation of Bill C-49. When new prostitution legislation (Bill C-36) was implemented in 2014, a decline in the rate of police-reported prostitution offences, largely attributed to communicating offences, was evident (Rotenberg, 2016). In 2014, the rates of prostitution offences also varied across the provinces (see Figure 10.2) and cities (see Figure 10.3).

Close to half (43 percent) of persons arrested for a prostitution-related offence between 2009 and 2014 were female, compared with less than one quarter (23 percent) of persons accused of any other type of offence overall during the same time period. Females accused of prostitution were much younger than the men who purchased (or tried to purchase) sexual services (median age of 31 versus 42), and repeat contact with police was more frequent among female accused (27 percent) compared with male accused (3 percent). And between 2008/2009 and 2013/2014, 30 percent of prostitution cases processed in criminal courts resulted in a guilty verdict; this was much lower than for criminal court cases in general (64 percent).

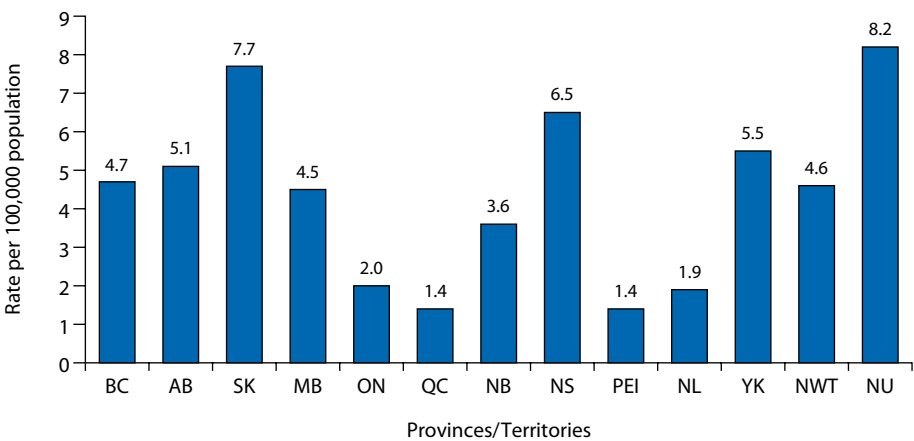
**FIGURE 10.1 Trends in the Rate of Prostitution Offences Between 1962 and 2014**



Note: Rates are calculated on the basis of 100,000 population. Populations are based upon July 1st estimates from Statistics Canada, Demography Division.

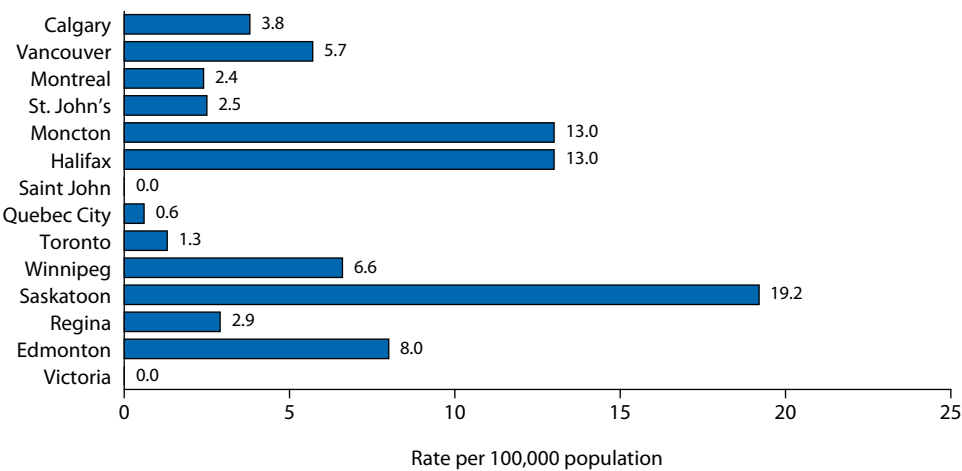
Source: Rotenberg, C. (2016). Prostitution offences in Canada: Statistical trends (Chart 1). Catalogue no. 85-002-X. Statistics Canada *Juristat*, 36(1), 4.

**FIGURE 10.2    2014 Rates of Police-Reported Prostitution Offences by Province**



Source: Rotenberg, C. (2016). Prostitution offences in Canada: Statistical trends (Table 1). Catalogue no. 85-002-X. Statistics Canada *Juristat*, 36(1), 21.

**FIGURE 10.3    2014 Rates of Police-Reported Prostitution Offences by City**



Source: Rotenberg, C. (2016, p. 22). Prostitution offences in Canada: Statistical trends (Table 2). Catalogue no. 85-002-X. Statistics Canada *Juristat*, 36(1), 22.

**Adults Versus Children**

First and foremost, we must acknowledge that Canada does not consider children to be prostitutes; we consider children to be exploited. Our laws and cultural compass do not permit children under the age of 16 to consent to sexual interactions.

Section 150.1(1) through (6) inclusive in our *Criminal Code* articulates consent to sex:

- Children age 16 and under cannot consent to sex;
- If there is a relationship of trust or authority, and/or dependency between the complainant and accused, then it is considered sexual assault;

- If the complainant is between the ages of 12 and 14 and accused is less than two years older, then it is NOT considered sexual assault;
- If the complainant is between 14 and 16 and accused is less than five years older and they are married, then it is NOT considered sexual assault.

### ***Prostitution Versus Sex Trafficking***

Sex trafficking and sex work do not exist in a vacuum; both are embedded in broader socio-economic processes that uniquely disadvantage women (Williams, 2011). An interconnected global economy, labour migration by both sexes, violence, and cultural norms have increasingly pushed women into migration (and prostitution) as a survival strategy. The traffic in women is inseparable from gender inequality, migration, cultural mores, and poverty, which impact everyone, regardless of their gender, class, race, or national origin (Williams, 2011). The defining characteristics of sex trafficking in international protocols and national legislation rests upon the premise that some variation of “force,” “fraud,” and/or “coercion” must have taken place. Focusing on sex trafficking specifically as a migration issue reveals the xenophobia, sexism, and institutionalized disregard for the poor that underlies much of contemporary discourse on the subject. Sex trafficking and institutional responses to it are social processes supported both directly and indirectly by the complicity of societies (Dewey, 2008).

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### **► WHAT DO YOU THINK?**

Consider whether sex trafficking occurs across borders or within countries. What does sex trafficking look like in your city/province? If a person is trafficked by people who are not associated with a criminal organization, does it still constitute trafficking? Discuss your opinion.

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### **What Are Prostitution’s Causes and Contributing Factors?**

Depending on your position along the continuum of prostitution discussed below, your belief in its causes may differ. But what we can claim with empirical evidence is that when we ask men and women who used to work in the sex industry, the majority have had negative, harmful, and destructive experiences prior to entering prostitution as well as while working in prostitution. Some of those causes and contributing factors are presented here. By no means is this list exhaustive, but rather an introduction to those most harmful.

#### ***Adverse Childhood Experiences***

Survival sex work involves exchanging sex for money to meet basic substance needs such as food and shelter. Oftentimes it is young people or teens who have run away from their homes or group homes because of abuse, neglect, and/or violence. Now on the streets, they face finding ways in which to survive. The average age of entry into prostitution (sexual exploitation) in Canada is 14 (McIntyre, 2005; McIntyre, 2010); that means that on average, the adults who we see today engaged in prostitution conducted their first transaction around age 14. McIntyre has been researching prostitution and sexual exploitation from the experiences of workers and clients. Of the men and women who were reinterviewed for *Strolling Away* (McIntyre, 2005), 100 percent had a



background of sexual and physical abuse prior to their involvement in prostitution and while working, and 81 percent had a background of involvement with child welfare.

### **Addiction**

Data from drug and alcohol treatment programs also point to triggering factors in childhood. In one study, 72 percent of adults reported physical and/or sexual violence histories, and of those, 75 percent of cases occurred during childhood (Liebshutz, Savestky, Saitz, Horton, Lloyd-Travaglini, & Samet, 2012).

Drugs and alcohol are also used to lure youth into prostitution. They are used as a means of coping while working in prostitution, or to support an addiction, all of which pushes and pulls people (youth and adults) into the cause–effect cycle of prostitution (McIntyre, 2005; McIntyre, 2010).

### **Mental Illness**

More prevalent in women than men, experiencing sexual and physical abuse as a child often leads to mental illnesses, such as depression, personality disorders, self-harm, and self-medicating, which in turn can lead to addiction and chronic mental illness. The cause–effect cycle continues—being vulnerable, ill, or addicted can lead to prostitution and being involved in prostitution can lead to coping with drugs and alcohol. Furthermore, suicide rates are also correlated with childhood adverse experiences and sexual exploitation.

In 2013, the national rate of suicide in Canada was 10.5 per 100,000 (Statistics Canada, 2017a). By province/territory, Nunavut had the highest rate of suicide in 2013 at 119 per 100,000 and Ontario had the lowest at 8.4 per 100,000.

### **Poverty**

Marginalization is the social process by which individuals and groups are relegated to the fringe of society. It is closely tied to the concepts of social exclusion and social disadvantage, which in turn systematically block people from rights, opportunities, and resources that are normally available in a society. Marginalization is closely related to vulnerability to predation, and creates the climate in which people living on the street and/or engaged in prostitution are often ignored or forgotten. Poverty can push people into committing crimes as well as engaging in prostitution as a means of survival. That in turn can position people within the cause–effect cycle of prostitution, addiction, violence, and mental illness noted above. High levels of unemployment (poverty), violence, and addiction force many into prostitution (Bruckert & Parent, 2004).

## **The Prostitution Debate**

Goldstein (2006) offers that the debate and discourse about prostitution often lobby around two socially constructed images. On one end, there is the image of “... the innocent victim, to be protected and relocated,” while on the other end there is the image of the prostitute as “an affront to public morality and hygiene to be controlled and contained” (Kantola & Squires, 2004, p. 80). In the first image, a victimization lens, it is sexual violence that is the result of an unequal distribution of power between men and women in society, and women are then portrayed as victims of sexual domination (Outshoorn, 2004). It is the idea of the fallen woman who has been led down a path of



moral destruction; the woman appears to lack any free choice and is simply responding to negative societal forces. This then requires intervention and protection, and if there is a victim, then there must be a perpetrator. The focus shifts to that perpetrator as the way to handle the issue, such as a change in legislation in Sweden by making it illegal to purchase sex (a.k.a., Johns or “dates”) and illegal to force someone to engage in prostitution (a.k.a., pimps or “boyfriends”).

The other image is classified as “public nuisance discourse.” These ideas are most often created and perpetuated through the media, particularly in Canada (Van Brunschot, Sydie, & Krull, 1999). An intense concentration on street workers in the media can be attributed to two key factors: (1) visibility; and (2) the link of prostitution to crime and disease. Prostitutes are most often characterized by what they are *not* instead of what they are. They are described by the norms and values (created by others in society) that they violate. They are defined by the problems they create for other people (condoms on the street, proximity to businesses) rather than by the problems that they themselves face (coercion, poverty, addiction). “It [is] the visible evidence of deviant bodies and deviant sexuality that [is] the issue” (Van Brunschot et al., 1999, p. 267); in other words, the proof of the sex trade is oftentimes more offensive to community members than the actual exchange of sex that is occurring (Van Brunschot et al., 1999).

Canada’s laws were inherited from the British monarchy. Historically, the aim of the law was to deal with the public nuisance created by street workers and brothels or bawdy houses (Goff, 2016). The law today is still intended to keep prostitution out of sight (Lowman, 2005), which has led to further alienation and vulnerability (by forcing sex workers underground). Scambler (1997) points to the fact that “it is the street worker ... who attracts the attention of politicians, the police, and other agencies of moral regulation and surveillance,” while “off street or indoor workers are inconspicuous to the point of invisibility” (p. 105). Street-level sex workers are not targeted because they are viewed as more or less guilty than indoor sex workers. The key difference is visibility. Indoor workers do not affect property values or contribute to perceived crime and disease in a community. The strongest voice in public nuisance discourse comes from a community level—those who argue that they are directly impacted by the sex trade. The problem is constructed as a restricted issue for those individuals who live or work in the area. Prostitution is often viewed as a “necessary evil,” as long as it takes place in another area (Van Brunschot et al., 1999). This **NIMBY (not in my backyard)** type of mentality is reflective of the visibility issue. People want the problem out of their area and do not give much thought to where the problem goes, just that it is removed from their “backyard.”

Repeated evidence demonstrates that the root causes of prostitution are of no interest to community members. The issues of highest importance are community aesthetics and property values. Residents believe that prostitution creates a very poor environmental and social impression. The neighbourhood also experiences heightened fear for the safety of women and children (Kantola & Squires, 2004). This serves to reinforce traditional patriarchal views, where men are strong and women and children are in need of protection. Women who are involved in prostitution are therefore doubly deviant in that they not only violate the law but also a gendered prescription of sexuality. Kantola and Squires (2004) point out that in prostitution “[t]he debate is underpinned

#### **NIMBY (not in my backyard)**

A belief that change in one’s neighbourhood will deteriorate the property value of homes and businesses.

by a strong notion of respectable female sexuality which excludes the idea of commercial sex” (p. 81). And the news media is able to constantly reinforce the same stereotypes (Hallgrimsdottir, Philips, & Benoit, 2006) by using a stereotypical image of the drug-addicted prostitute bringing disease and crime into a neighbourhood. Noteworthy is that next to no attention is paid to the purchasers of sex (the “Johns”). Despite that official statistics reveal Johns come in all shapes, sizes, ages, races, and marital statuses, they are often ignored or kept hidden from NIMBY discussions. No one is demanding that these men (and it is primarily men) stop bringing disease, drugs, and money into communities seeking to buy sexual services.

### The Continuum of Prostitution

Sociologists and criminologists (and other academics) have tried to develop and apply theoretical perspectives to explain sex work and the sex industry. No one theory fully encompasses the causes, consequences, and components within the sex industry, but many theories encapsulate valid points to consider and/or dispute (Scambler & Scambler, as cited in Scambler, 1997).

Socio-biological theories start from the proposition that differences between males and females can be explained by biology. And that sex work is believed to be a social imperative to accommodate the overpowering male sex drive, and therefore the sex industry is needed to serve that purpose.

Socio-pathological theories claim that female sex work is the result of some deep and underlying pathology or abnormal psyche in women that drives them to violate societal norms.

Feminist theories typically draw on the concept of patriarchy and that sex work is a result of men’s domination and control over female bodies and sexuality. Patriarchy also reinforces that women are sexual objects and it permits their violation at the hands of men.

While none of those theories entirely explains sex work or sexual exploitation fully and completely, they each have something to offer. Extended from those theories is the spectrum of ideology—how we think society should deal with prostitution. Figure 10.4 illustrates the continuum of prostitution.

**FIGURE 10.4 The Continuum of Prostitution**



### **Abolition**

Farley (2004) adamantly claims that regardless of whether prostitution is legal or illegal or decriminalized or regulated, violence and harm are inherent. And psychological harm (as well as medical harm) often follows time spent in the sex industry. Many studies have documented that physical and sexual violence are part of the norm for any woman (or man) involved in sex work (Betteridge & Csete, 2016; Valera, Sawyer, & Schiraldi, 2001, as cited in Farley, 2004; MacKinnon, 2005).

Abolition assumes all sex work is abusive, victimizing, and enslaving. Abolitionists seek to eradicate prostitution entirely and refuse to accept the personal agency of sex workers. Ekberg (2004) advocates for the Swedish model, where prostitution is officially acknowledged as a form of male sexual violence against women and children, one of the cornerstones being that the root cause is men's demand for and use of women and girls for sexual exploitation. She goes on by claiming that all forms of legal or policy measures that legalize different prostitution activities (brothels, pimps, traffickers, brothel owners, and buyers) are seen as anathema to gender equality and the rights of women and girls to live lives free of exploitation and male violence.

The street-based sex worker is often the most vulnerable. They are ignored and alienated and have little to no choice in being selective of clients or ensuring their physical safety. Box 10.4 discusses the case of missing and murdered women from Vancouver's Downtown Eastside. The subject of missing and murdered women, sex workers, and the vulnerability of Indigenous women is discussed in more depth later in the chapter.

#### **BOX 10.4**

##### **Vancouver's Missing and Murdered Women**

Over 60 women went missing from the Vancouver Downtown Eastside (DTES) between the early 1980s and 2002. These women were the epitome of vulnerable, caught in a cycle of violence, distress, addiction, and/or mental illness. They were further marginalized by their involvement in the survival sex trade.

Although investigators found DNA remnants of over 50 women on his farm, Robert William "Willie" Pickton of Port Coquitlam was only charged with the murders of 26 of these women and convicted on just 6 counts in 2007.

On September 27, 2010, the Missing Women Commission of Inquiry was established to look into the conduct

of the police investigations in this case. Commissioner Wally Oppal's 2012 final report found that "the missing and murdered women were forsaken twice: once by society at large and again by the police." The inquiry recognized that the intersection of existent laws, social norms and mores, and police culture all played an important role in shaping the relationship between the police and women in the DTES, and potentially affected whether or not (and how) the police investigations into the women's disappearances was handled (Oppal, 2012). As a result, years passed before attention was paid to finding the dozens of missing women.

### **Criminalization**

To criminalize aspects of prostitution is to make it illegal to sell sex or purchase sex or both. Such an approach is grounded in the philosophy of abolition, where goals are to enforce a moral ethos that selling and buying sex is wrong, and that exploiting and forcing people into sex work should be punished. There are two approaches to criminalization:

1. The act of prostitution and all of its associated acts are illegal (China, Islamic republics, South Africa); or

2. The act of prostitution is not illegal, but all of its associated acts are illegal, such as soliciting, procuring, brothel-keeping, abetting brothel-keeping, living off sex work earnings, vagrancy, loitering, public nuisance (India, UK, Sweden, Canada).

Criminalization aims to prevent or eliminate certain actions from happening in society by making them illegal. Think about all of the many other laws in our *Criminal Code*—laws that articulate behaviours that are not acceptable in society and will result in punishment (murder, robbery, fraud, etc.). Criminalizing prostitution comes from that same place—that society acknowledges the inherent harm of prostitution and tries to prevent people from engaging in prostitution-related behaviours by making those behaviours against the law.

### ***Decriminalization***

Betteridge & Csete (2016) describe decriminalization as providing limited “zones of tolerance” (New Zealand, Australia, Sweden) that provide a balance between supporting sex workers (offering them means of exiting and/or harm-reduction support to keep them safe) and reducing or eliminating exploitation and forced prostitution. Evaluations of decriminalization conducted by the PIVOT Legal Society (2006) reveal that:

- When clients are directed away from street-level known areas of prostitution, sex workers go indoors (brothels, massage parlours, hotels, and the Internet) where it can be done more safely;
- Sex workers who are left on the streets face more violent clientele, more unsafe sex, with no time to assess the safety of clients; and
- There is no evidence that crimes associated with the sex industry (such as drug trafficking, theft, robbery) are impacted as a result of decriminalization.

The PIVOT Legal Society (2006) goes on to proclaim that criminalization of commercial and consensual sexual activity is not only unnecessary, it fosters and fuels violence. It undermines sex workers’ access to justice, weakens their ability to maintain health, denies the protection of labour laws, limits their options, and takes away the right to sexual autonomy. Advocates of decriminalization (and legalization) go on to say that criminalizing sex work marginalizes and isolates workers. In New Zealand, where sex work was decriminalized in 2003, sex workers can receive customers in their own small, secure establishments, are empowered to oblige clients to use condoms, and can draw on labour laws to negotiate working conditions (Mensah & Bruckert, 2012).

### ***Legalization***

Legalization typically means that the entire industry of prostitution (and its various players, acts, and components) is legal and regulated by municipal and/or provincial governments (Betteridge & Csete, 2016). This would categorize prostitution as bona fide work, which must follow provincial and municipal workplace health and safety regulations, health care benefit requirements, conditions of licensing, and taxable income (such as in the Netherlands, and Nevada in the US). From this position, female (and male) sex workers do not consider themselves to be victims or exploited or as products of a patriarchal social structure. In the words of one such sex worker to her parents:

“You’ve known me for 28 years... I can sort of understand the [sic] up reasoning that makes Catherine MacKinnon and Andrea Dworkin look at me and tell me I’m being exploited whether I think so or not, but *you should know better*.” ... What I’ve never understood is why my parents can’t wrap their heads around the idea that sex work might be a healthy, positive choice for me, and why they haven’t worked harder over the years to try. I understand why my parents are concerned for my safety. I’m concerned for my safety too, and have a better grasp on what I need to do to keep myself safe than they do. But understanding sex work on a conceptual level seems like something they could handle. Maybe they could read everything ever written by every sex workers’ rights activist from Priscilla Alexander to Carol Leigh and still think that sex work is degrading towards women—towards me. I really don’t think so. (Hustle, 2012)

Legalizing all aspects of prostitution comes from the old adage that “if you can’t beat them, join them.” Advocates believe that prostitution is inevitable and a byproduct of most all societies around the world; therefore, it only makes sense to legalize and regulate it. This way, governments can recoup some of the costs—instead of money going into the hands of pimps and traffickers, money would go into government coffers in the form of business licenses and property taxes. Furthermore, arguments in favour of legalization also claim that doing so would virtually eliminate the criminal elements and violence, and increase health, safety, and agency of men and women everywhere.

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### ► WHAT DO YOU THINK?

Where do you sit on the continuum of prostitution? Are you pro-legalization or completely against prostitution and all its forms as the abolitionist?

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### Missing and Murdered Women and Girls of Canada

Every year in Canada, approximately 65,000 people are reported as missing to police. There is no one single authoritative list of missing and murdered women and girls for all of Canada. Lack of statistics feeds controversy and debate over the actual number of victims and the subsequent strategies needed to combat it. One calculation estimates between 600 and 1,000 women and girls are missing or have been murdered across Canada. The Royal Canadian Mounted Police (RCMP) (2014) have recorded incidents of homicides (men and women) and unresolved missing persons totalling 1,181 (164 missing and 1,017 homicide victims).

Public Safety and Emergency Preparedness Canada (2005), on the other hand, indicates that over 100,000 persons are reported missing annually, approximately 4,800 persons were still recorded missing after a year, and approximately 270 new cases of long-term missing persons are reported annually. As well, between 20 and 30 sets of human remains are found each year in Canada. British Columbia has historically had the highest number of missing persons within Canada. Reasons posited for this trend include the extensive coastline, large wilderness areas, and a large transient population due to mild weather conditions.

There are similarities across all female homicides in that they are perpetrated mostly by men, and the men know their victims (i.e., an acquaintance or a spouse) (Oppal, 2012). Advocates believe the RCMP figures underestimate the crisis because they do not include deaths unduly deemed not to be suspicious or disappearances that were never

reported. Some believe the true number of killings and disappearances is closer to 4,000 annually (Baum, 2016). Many types of perpetrators have been brought to justice, such as Paul Bernardo and Karla Homolka in Ontario; Thomas Svekla, Joseph Laboucan, and Michael Briscoe in Alberta; Robert Pickton and Clifford Olsen in British Columbia, as well as many remaining unknown.

Statistics Canada has not historically gathered and analyzed information about missing persons because going missing is not a crime (whereas prostitution offences are recorded). In recognition of this paucity of information, efforts are underway (at the federal level) to build a national missing persons database, one that communicates between all federal, provincial, and municipal policing bodies and Statistics Canada.

An arm of the federal government, the National Centre for Missing Persons and Unidentified Remains (NCMPUR Operations) of the RCMP is Canada's national centre that assists law enforcement, medical examiners, and chief coroners with missing persons and unidentified remains investigations across the country. They define a missing person as:

Anyone reported to police or by police as someone whose whereabouts are unknown, whatever the circumstances of their disappearance, and they are considered missing until located. A missing person under the age of 18 is classified as a missing child. In the case of a missing child, they are considered missing if they are no longer in the care or control of their legal guardian and have not been removed by law, and they are considered missing until returned to appropriate care and control. (Government of Canada, 2017)

### ***Homicides of Sex Workers***

For decades, sex workers and the sexually exploited, primarily women, have been disappearing and dying violently and at alarming rates. Between 1991 and 2014, Rotenberg (2016) reported that there were 294 recorded homicides of sex workers, where 34 percent of those homicides remained unsolved, a much greater proportion than for homicides that did not involve a sex worker victim (20 percent). It is important to note here that "recorded homicides of sex workers" relies on the offence file labelled as such—only if police identify the victim as a sex worker and only if a homicide is brought to police attention.

Project Eclipse, Canada's first investigative case conference, was organized by the RCMP in 1991 in Victoria to look into 26 unsolved homicides of women from Vancouver and Victoria between 1985 and 1991. More than half of the victims were believed to be engaged in the sex trade. The conference concluded that a single killer was not responsible for 26 homicides, but that several of the murders were linked. In 1998, the bodies of two women engaged in the sex trade were found in alleys in the DTES; these became known as the "Alley Murders." Three women from the DTES were found murdered in the mountains near Agassiz or Mission, BC; these became known as the "Valley Murders." And since the early 1970s, many women and girls have disappeared along the Yellowhead Highway 16 in northern BC, which runs between Prince Rupert and Prince George and has become known as the "Highway of Tears."

### ***Missing and Murdered Indigenous Women***

The Native Women's Association of Canada (NWAC) has documented that, over the past 30 years, more than 500 Indigenous women and girls have gone missing or have been found murdered in communities across Canada. In 2014, the overall homicide



rate for Indigenous victims was six times higher than that of non-Indigenous people (Miladinovic & Mulligan, 2015). Between 1997 and 2014, there were 71 female sex worker victims of homicide who were identified as Indigenous, representing one in three (34 percent) of all female sex worker victims. This is more than double the proportion of Indigenous female homicide victims who were not sex workers (16 percent) (Rotenberg, 2016). RCMP-recorded incidents of Indigenous female homicides and unresolved missing Indigenous females between 1980 and 2012 is 1,181 missing and 1,017 homicide victims (RCMP, 2014). There are 225 unsolved cases of either missing or murdered Indigenous females, whose cause of disappearance was categorized at the time as “unknown” or “foul play suspected.” The total indicates that Indigenous women are overrepresented among Canada’s murdered and missing women.

Indigenous men also disappear and die violently, but the national inquiry is focusing solely on women and girls because of their overall disproportionate rate of victimization. A disproportionate number of the missing and murdered women are Indigenous: while three percent of BC’s population consists of Indigenous women, they comprise approximately 33 percent of the missing and murdered women. Of the 33 women whose DNA was found on Pickton’s farm, 12 were Indigenous. Indigenous women experience higher levels of violence, both in terms of incidence and severity, and are disproportionately represented in the number of missing and murdered women across Canada. And the RCMP (2014) also believe that Indigenous women are roughly seven times more likely to be slain by a serial killer than non-Indigenous women.

Shortly after the RCMP’s 2014 report was published, 15-year-old Tina Fontaine’s body was pulled from a Winnipeg river—a high-profile homicide case that reignited calls for a national inquiry (Baum, 2016). Every month and every year, another woman’s body is found: 25-year-old Victoria Lynn Isabelle Levesque’s body was found east of Calgary in 2017; in 2014, Loretta Saunders’ body was found on the side of a New Brunswick highway; Cherrisse Houle, age 17, was discovered murdered in 2009; and the incidents have no end in sight.

### ***Intergenerational Trauma and the Vulnerability of Indigenous Women***

Systemic and institutionalized racism, as well as the effects of historical violence, such as residential schools, the *Indian Act*, and other legacies of colonization have resulted in generations of violence in the daily lives of Indigenous women throughout Canada. There is much diversity among Indigenous women. Some are First Nations, others Métis or Inuit. Some live on reserves, and many more live off reserves, in towns and cities across Canada. The department of Aboriginal Affairs and Northern Development Canada (2006) reported that there were over 100,000 First Nations women aged 15 and over living on reserves. Furthermore, almost 330,000 Indigenous women lived off reserves: approximately 135,000 Métis women and approximately 16,000 Inuit women.

The 2012 Aboriginal Peoples Survey (Scott & Smith, 2015) reported that Canada was home to 859,970 First Nations people; 451,795 Métis; and 59,445 Inuit, with the rest reporting other two Aboriginal identities (26,485) or more than one Aboriginal identity (11,415). From 2006 to 2011, the First Nations population in Canada increased by 23 percent, while the Métis population rose by 16 percent, and the Inuit population by 18 percent. Of those who identified as First Nations in 2011, three-quarters (75 percent or 645,940) reported being a Treaty Indian or a Registered Indian



as defined by the *Indian Act*. Over one-third (38% or 328,445) of all First Nations people (50% of First Nations people who were Treaty or Registered Indians, or 322,650 individuals) lived on a reserve.

Indigenous people (and women, in particular) are much more likely than non-Indigenous people to be victims of violent crime and spousal violence. Statistics Canada (2017b) reports that 24 percent of Indigenous women reported being victims of spousal violence in 2004, more than three times higher than the rate for non-Indigenous women (7 percent); and 40 percent of Indigenous people were the victims of childhood physical and/or sexual abuse, compared with 29 percent for non-Indigenous people.

Statistics Canada's report goes on to state that Indigenous women are also seven times more likely to be murdered than non-Indigenous women. Research conducted by the Native Women's Association of Canada informs that Indigenous women and girls are as likely to be killed by a stranger or an acquaintance as they are by an intimate partner—very different from the experiences of non-Indigenous women in Canada, whose homicide rates are often attributed to intimate partner violence.

While violence against Indigenous people has been the focus of social policy and research recently, their overrepresentation as victims or offenders in the justice system has been long standing. Various studies and reports have illustrated this elevated risk of victimization, such as those produced by the Native Women's Association of Canada, the Truth and Reconciliation Commission of Canada, the Royal Canadian Mounted Police, and Statistics Canada (Boyce, 2016, pp. 3–6). In 2014, the overall rate of violent victimization among Indigenous people was more than double that of non-Indigenous people (163 incidents per 1,000 people versus 74 incidents per 1,000 people). Regardless of the type of violent offence, rates of victimization were almost always higher for Indigenous people than for non-Indigenous people. Additionally, Indigenous people (9 percent) were more likely than non-Indigenous people (4 percent) to have been a victim of spousal violence in the past five years. Specifically, women (10 percent) were about three times as likely to report being a victim of spousal violence as non-Indigenous women (3 percent), and Indigenous men (8 percent) were twice as likely as their non-Indigenous counterparts (4 percent).

Such violence is intergenerational and has been normalized but not openly discussed—violence in many communities is chronic and endemic and is connected to the abuse suffered in residential schools. The link between loss of culture to intergenerational violence is recurrent. Residential school survivors re-entered their communities with physical and emotional scars that did not get treated; they were not parented properly, and in turn were not able to properly parent children of their own. The cycle of abuse, coping with drugs and alcohol, self-loathing, shame, and trauma was passed onward to the next generation. The long-term impact of these colonialist policies continues to be keenly seen and felt by the overrepresentation of Indigenous peoples in nearly every measured indicator of social and physical suffering in Canada and within the criminal justice system (Fry, 2011; Oppal, 2012).

### ***National Inquiry into Missing and Murdered Indigenous Women and Girls***

In response to calls for action from Indigenous families, communities, and organizations, as well as non-governmental and international organizations, the Government of Canada launched the National Inquiry into Missing and Murdered Indigenous Women and Girls in September 2016.

Indigenous organizations and leaders asserted that Canada was not doing all it could as a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (United Nations General Assembly, 2007). Grand Chief Sheila North Wilson of northern Manitoba—who coined the social media hashtag #MMIW for missing and murdered Indigenous women—noted that it was women who organized the vigils and annual marches calling for an inquiry. Since her culture is matriarchal, taking care of the women also means taking care of families and communities (Baum, 2016).

The National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) is independent from the government and is composed of five commissioners from across the country. The commissioners' mandate is to examine and report on the systemic causes of all forms of violence against Indigenous women and girls in Canada by looking at patterns and underlying factors, including social, economic, and historical factors, and to examine institutional policies and practices. The mission is to learn the truth by honouring the lives and legacies of Indigenous women and girls. This encompasses three goals (Girls, 2016):

1. Finding the truth
2. Honouring the truth
3. Giving life to the truth as a path to healing

While the terms of reference do not specify the social ills that should be looked at, the following factors will undoubtedly be examined: the overrepresentation of Indigenous children in the child-welfare system, racism, sexism, inadequate on-reserve housing and education opportunities, poverty, addiction, sexual exploitation, domestic violence, and insufficient public transit (specifically along the “Highway of Tears” in northern British Columbia, where numerous women have died or disappeared in recent decades). The commissioners must make recommendations on “concrete and effective action that can be taken” as well as suggest ways to honour the victims. The commissioners and their staff can conduct hearings wherever they see fit, but their mandate says they should especially do so within Indigenous communities. The commissioners are authorized to establish regional and issue-specific advisory bodies comprising, among others, victims' relatives. They can take into consideration previous studies, including the Truth and Reconciliation report (2015), into the horrors experienced by Indigenous children in the residential school system and the Oppal Inquiry in British Columbia (Oppal, 2012), which examined police failures in investigating the disappearances of women slain by serial killer Robert Pickton.

The federal government also passed an order in council launching the inquiry under the *Inquiries Act*, which states that the MMIWG commissioners may issue subpoenas to compel testimony and documents. The inquiry's terms of reference preclude the commissioners from making findings of civil or criminal liability. Some of the most important and controversial areas of discussion—child welfare and policing, for example—fall outside federal jurisdiction. To overcome this and ensure that the inquiry is national and not just federal, the provinces and territories have agreed to pass companion orders in council. These orders will empower the commission to pursue matters of provincial and territorial jurisdiction.

The commissioners of the National Inquiry into MMIWG officially began work in September 2016. Their first report, an interim document setting out preliminary findings

and recommendations, was to be submitted before November 1, 2017. The final report is due a year later. The MMIWG Inquiry must be understood within the provincial, national, and international phenomenon of the serial murder of women and, more specifically, targeted groups of women. The fact-finding mandate focuses on a specific group of female victims and the police response in a particular time and place, but it is connected to this broader phenomenon of critical dimensions. (See also Box 10.5.)

### BOX 10.5

#### **“Frustrated Families Vow to ‘Blockade’ Missing and Murdered Inquiry Hearings”—CBC News**

According to a CBC News report, “Some family members of missing and murdered Indigenous women and girls are vowing to blockade meetings of the national inquiry to protest what they call a disastrous start.” The inquiry has cycled through three directors of communications in ten months, and has been plagued by complaints from family members about compressed timelines. The first interim report from the inquiry is due in November 2017, but one father of a murdered woman states that calls to the 1-800 number are not returned and emails go unanswered. Another parent of a murdered woman claims that Elders speaking their Indigenous languages are not understood by record keepers, and there is little respect paid to sacred instruments like the drum, fire ceremonies, and tobacco. Many feel that the inquiry has placed blame unfairly on families for cancelling scheduled meetings this summer rather than admit they were simply not

prepared. Indigenous Affairs Minister Carolyn Bennett was able to hold pre-inquiry meetings throughout the country in a matter of months, but nearly a year after the launch of the national inquiry, things remain largely at a standstill. As of May 2017, the inquiry has spent approximately 10 percent of its \$53-million budget. Marion Buller, the chief commissioner, admitted that mistakes had been made and that more needs to be done to regain the trust of family members. Concern from several families is that this report will be shelved like many others and the process feels like an adjudication or court instead of an Indigenous knowledge-based collaboration.

Sources: Tasker, J.P. & Zimonjic, P. (2017, May 19). MMIWG chief commissioner still has “hope” despite rocky start. CBC News; and Tasker, J.P. (2017, May 23). Frustrated families vow to “blockade” missing and murdered inquiry hearings. CBC News.

### SUMMARY

Discussion and debate surrounding prostitution, sex work, sexual exploitation, and Indigenous women have circled within Canada for decades. Advocates, service providers, and academics have been pressuring governments to take action. Beginning in 2015, these issues are now on the desks of federal cabinet ministers coast to coast. This does not mean that the issues and problems are now solved. It will take years (perhaps even more than one generation) before substantive and prolonged change is weaved within our society’s social and cultural fabric.

In the meantime, we can continue this important work together; we can keep the discussions flowing. Research is needed to inform practice and financial support is required for various bodies (police, the courts, social services, schools, etc.) in order to carry out recommendations and make significant change.

## DISCUSSION QUESTIONS

1. If money was unlimited, where would you direct funding that would work to eliminate violence against women, eliminate racism and sexism against Indigenous women, and/or address sex work and sexual exploitation?
2. Compare and contrast countries—choose one country and compare its prostitution laws and policies against Canada's. What key differences or similarities emerge?
3. Why do you think it has taken the federal government this long to initiate an Inquiry into the Missing and Murdered Indigenous Women and Girls of Canada?
4. Review the Call to Action Report of the Truth and Reconciliation Commission and choose one of the calls to action within it. What practical things would be needed to implement those recommendations fully and completely?
5. Consider the causes and consequences of prostitution identified within this chapter. Which do you think has a stronger correlation than others?
6. Describe the data available from courts and correctional institutions in Canada. Discuss the crimes that women are most often convicted of and explain why negative attention is paid to prostitution offences, despite their low occurrence?

## ADDITIONAL RESOURCES

### Suggested Readings

- The Aboriginal Multi-Media Society. (2016). The unsolved: Missing and murdered Indigenous women and girls. [www.ammsa.com/content/missing-and-murdered-indigenous-women-and-girls](http://www.ammsa.com/content/missing-and-murdered-indigenous-women-and-girls).
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### Films and Videos

- Correctional Service of Canada. (2015). *Beyond the fence: A virtual tour of a Canadian penitentiary* [Virtual tour]. Retrieved from <http://www.csc-scc.gc.ca/csc-virtual-tour/index-eng.shtml>.
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### Websites

- Canadian Occupational Safety: [www.cos-mag.com/ohs-laws-regulations/32364-sex-workers-facing-increased-safety-risks/](http://www.cos-mag.com/ohs-laws-regulations/32364-sex-workers-facing-increased-safety-risks/)
- RCMP Project Kare: <http://www.rcmp-grc.gc.ca/ab/community-communaute/mis-dis/kare/index-eng.htm>
- RCMP Joint Forces Operation: [www.rcmp-grc.gc.ca/on/prog-serv](http://www.rcmp-grc.gc.ca/on/prog-serv)
- The National Centre for Missing Persons and Unidentified Remains (NCMPUR Operations): [www.canadasmissing.ca](http://www.canadasmissing.ca)
- The Sixties Scoop: <http://sixtiesscoopclaim.com>
- Truth and Reconciliation Commission of Canada: <http://reconciliationcanada.ca/>

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